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In the Supreme Court of the United States

No. **249**

THE EVANGELICAL LUTHERAN SYNOD OF KANSAS AND
ADJACENT STATES, a Corporation,
Petitioner,

VERSUS

FIRST ENGLISH LUTHERAN CHURCH of Oklahoma City, a
Corporation; FRED H. BLOCH, as Pastor Pretendant of
such Church; and E. C. DOERR, J. H. WINNEBERGER,
ALBERT SWANSON, STANLEY HOMER, WALTER QUICK,
A. E. ROSENTHAL, V. H. SMITH, and S. C. HOSHUR, as
Members of the Board of Deacons and Trustees,
Respondents

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT**

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August, 1943.

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PETITION

Your Petitioner, The Evangelical Lutheran Synod of
Kansas and Adjacent States, a corporation, hereinafter
referred to as "Kansas Synod", prays that a writ of *cer-
tiorari* issue to review the judgment of the United States
Circuit Court of Appeals for the Tenth Circuit entered in
this cause on May 19, 1943, reversing a judgment of the
United States District Court for the Western District of
Oklahoma and remanding said cause to the district court
with direction to dismiss the action.

OPINIONS BELOW

The opinion of the District Court (R. 69-92) is reported in 47 Fed. Supp. 954. The opinion of the Circuit Court of Appeals (R. 107-110) is reported in 135 Fed. (2d) 701.

JURISDICTION

The judgment of the Circuit Court of Appeals sought to be reviewed was entered May 19, 1943 (R. 107-110). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT

The Petitioner, Kansas Synod, is a District Synod within the United Lutheran Church in America, a national church organization adhering to the Lutheran Faith, and has jurisdiction over a number of Lutheran Church congregations within the States of Kansas, Oklahoma and Missouri. The First English Lutheran Church of Oklahoma City, hereinafter referred to as "City Church", is an incorporated religious society in Oklahoma City organized under the jurisdiction of the Kansas Synod; and up until the controversy hereinafter referred to, was a member of the Kansas Synod.

The United Lutheran Church in America, the National Body, the Kansas Synod, the District Body, and the City Church, the Local Congregation, all have written

constitutions which set out and define their respective rights and powers in relation to each other (R. 80-84).

In 1942 the congregation of the City Church became divided and at a congregational meeting a plurality of the members of the congregation present and voting adopted a resolution attempting to withdraw the City Church from membership and from the jurisdiction of the Kansas Synod, and attempted to affiliate the City Church with the Midwest Synod, another District Synod within the United Lutheran Church in America (R. 43). The Kansas Synod was advised of this action by the City Church, and by resolution it refused to give its consent to such withdrawal (R. 11-12); and by resolution the Kansas Synod suspended the pastor of the City Church and recognized the faction of the congregation of the City Church which opposed the withdrawal of the City Church from the Kansas Synod, as the lawful congregation of the City Church (R. 13-18). This resolution was served upon the pastor and officers of the City Church who disregarded the resolutions of the Kansas Synod; and this action was commenced by the Kansas Synod in the United States District Court for the Western District of Oklahoma against the City Church, the pastor, and members of the Board of Deacons and Trustees thereof to enjoin them from exercising any control over the City Church building and parsonage, from affiliating the City Church with the Midwest Synod, from paying over any money to the Midwest Synod, and from interfering with those members of the congregation of the City Church who remained loyal to

the Kansas Synod in their use of the church property (R. 3-22).

The Respondents by their answer alleged in effect that the City Church had the right to withdraw from the Kansas Synod without its consent (R. 41-46).

It was alleged in the complaint by the Kansas Synod and admitted by stipulation at the trial that the church building and parsonage of the City Church, title to which is held in the name of the City Church, is of the reasonable value of \$65,000.00; and it was alleged in the complaint and admitted at the trial that in the fiscal year 1940 the City Church paid to the Kansas Synod for benevolences a sum in excess of \$1400.00; and that in a period of five years—if the members of the Council of the City Church are not restrained and enjoined from paying over money to the Midwest Synod—that a sum in excess of \$7,000.00 will be diverted from the Kansas Synod within said period. It was alleged in the complaint, but not admitted, that the Kansas Synod has a direct, inherent and organic interest in the City Church.

The case was tried upon stipulation (R. 47-52) and testimony, taken by deposition, of two witnesses (R. 52-69); the trial court wrote an opinion (R. 69-92) and rendered judgment in favor of the Kansas Synod, granting an injunction substantially as prayed for (R. 98-99). But by subsequent order the trial court provided that, pending an appeal to the Circuit Court of Appeals, the opposing factions should each have exclusive use of the City Church building during alternate weeks for the purpose of conducting religious services (R. 100-102).

The Respondents appealed to the Circuit Court of Appeals for the Tenth Circuit, and their grounds for appeal were substantially that it was not necessary for the congregation of the City Church to obtain the consent of the Kansas Synod in order to withdraw therefrom, and that the Commission of Adjudication of the United Lutheran Church in America by its decision held that said congregation of the City Church had the right to withdraw from the Kansas Synod (R. 1-2).

The cause was submitted to the Circuit Court of Appeals without oral argument (R. 107), and the Circuit Court of Appeals wrote an opinion (R. 107-110) holding that title to the property of the City Church has never been vested in the Kansas Synod, and that it has no beneficial interest therein which would be violated by the transfer of the synodical affiliation by the City Church; and that the City Church, although it has heretofore made payments to the Kansas Synod for benevolences, is under no legal or actionable obligation to continue to make such payments, and that therefore the Kansas Synod has no right to maintain the action. The Circuit Court of Appeals reversed the judgment of the trial court and remanded the cause with direction to dismiss the same.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in assuming, contrary to the evidence, that the City Church is an independent congregation and not bound by the orders and judgments of the Kansas Synod.

2. The Circuit Court of Appeals erred in holding that because title to the City Church property is held in the name of the City Church, a corporation, that the Kansas Synod has no beneficial interest therein.

3. The Circuit Court of Appeals erred in holding that the City Church is under no legal or actionable obligation to make payments for benevolences to the Kansas Synod.

4. The Circuit Court of Appeals erred in holding that the Kansas Synod cannot maintain this action.

REASONS FOR GRANTING THE WRIT

1. The Circuit Court of Appeals in holding that the City Church is an independent congregation and not bound by the orders and decrees of the Kansas Synod ignored the constitutional provisions of the United Lutheran Church in America, the Kansas Synod, and the City Church, which definitely set forth and provide that the City Church is under the jurisdiction of the Kansas Synod and must obey its orders and judgments, and completely ignored the decision of the District Court of Appeals of California in *First English Lutheran Church of Los Angeles et al. v. Disinger et al.*, 6 Pac. (2d) 522, and

second appeal, 30 Pac. (2d) 545; and the decision of the Supreme Court of Pennsylvania in *Nagle et al. v. Miller et al.*, 118 Atl. 670, which decisions definitely hold that a congregation within the United Lutheran Church in America is subordinate to the superior judicatories within the United Lutheran Church in America and is subject to and bound by their orders and decrees.

2. The opinion of the Circuit Court of Appeals in holding that the Kansas Synod has no beneficial interest in the church property and parsonage of the City Church is in conflict with the principles laid down by this Court in *Watson v. Jones*, 13 Wall. 679, 20 L. ed. 666; and is in direct conflict with the opinion in *Barkley et al. v. Hayes et al.*, decided by the United States District Court for the Western District of Missouri, in 1913, 208 Fed. 319, which was affirmed by the Circuit Court of Appeals for the Eighth Circuit in *Duvall et al. v. Synod of Kansas, etc.*, 222 Fed. 669, and affirmed by the Supreme Court of the United States in *Shepard et al. v. Barkley et al.*, 247 U. S. 1; and is in direct conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in *Purcell et al. v. Summers et al.*, decided in March, 1942, 126 Fed. (2d) 390, in which *certiorari* was denied by the Supreme Court of the United States on October 12, 1942, 317 U. S. 640; and is in conflict on principle with the decision of the Supreme Court of the United States in *Helm v. Zarecor*, 222 U. S. 32; and is in direct conflict with the decision of the Supreme Court of South Dakota in *Presbytery of Huron et al. v. Gordon et al.*, decided in 1941, 300 N. W. 33; and is in conflict with the decision of the Appellate

Division of the Supreme Court of New York in *Trustees of the Presbytery of New York v. Westminster Presbyterian Church of West Twenty-third Street et al.*, 127 N. Y. Supp. 851.

3. The opinion of the Circuit Court of Appeals in holding that the City Church is under no legal or actionable obligation to make payments to the Kansas Synod ignores the constitution of the Kansas Synod, and conflicts with the principle set forth in the decision of the Supreme Court of the United States in *Watson v. Jones*, *supra*.

4. If the decision below is allowed to stand it will be an adjudication that any of the 3980 congregations of the United Lutheran Church in America located within the continental United States and Canada, having a membership of more than a million and a half Lutherans, may disregard the organic law of the church and the judgments of the superior judicatories within said church organization, and may withdraw its affiliation with said church at any time by plurality vote of its membership without the consent of any superior body within the church organization.

The questions here raised are of the greatest importance to the entire membership within the United Lutheran Church in America, as well as the membership of the Kansas Synod, and if the decision below is allowed to stand it will result in untold confusion which may easily lead to the complete disruption of the organization within the United Lutheran Church in America which has been in existence for more than twenty years.

CONCLUSION

It is respectfully submitted that for the reasons stated this petition for a writ of *certiorari* should be granted.

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August, 1943.